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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,346	01/31/2001	Suggy S. Chrai	176650-96	2597

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EXAMINER

WILLIAMSON, MICHAEL A

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 02/25/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/774,346

Applicant(s)

CHRAI ET AL.

Examiner

Michael A. Williamson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 17-19 and 21-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 17-19 and 21-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Pending Claims

The pending claims in the instant application are 1-10, 17-19 and 21-37. The independent claims are 1, 18 and 33.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-10, 17-19 and 21-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Mlodozeniec (U.S. Patent 4,332,789).

Mlodozeniec discloses a product comprising a package which is a container and a plurality of solid, discrete pharmaceutical or diagnostic unit forms that are physically separated and independent of each other and in the form of a diagnostic reagent, a tablet, a caplet, a powder, or a capsule wherein each unit dosage form includes at least one active ingredient in an amount which does not vary from a predetermined target

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amount by more than 5 weight percent. The unit forms are attached to a planar base thermoplastic substrate film, covered by a second planar thermoplastic film and surrounded by a bond that joins the substrate film and the cover film. The ingestible thermoplastics are polyvinylacetate, hydroxypropylmethylcellulose, polyethylene oxide, polypropylene, polyester or polyamide. Mlodozeniec also discloses that the package may include multiple layers of unit forms. Mlodozeniec further discloses that optical scanning may be used in determining the amount of active ingredient (see Abstract, Fig. 6a-6d, col. 4, lines 21-31, col. 6, lines 13-21, col. 7, lines 33-44, col. 12, line 21 through col. 13, line 25, col. 13, lines 36-66, col. 16, lines 25-32, col. 16, line 57 through 68, col. 24, line 27 through col. 26, line 26 and col. 33, line 50 through col. 35, line 15). With regard to the recitation of a plurality of semi-spherical bubbles or a deposit having a substantially spherical shape, Mlodozeniec discloses that the cover forms a "basket shape" over the unit forms (see Figs. 6). A change in size or in shape in the absence of a change in function does not impart patentability (see *In re Rose*, 220 F.d2 459, 105 USPQ 237 (CCPA 1955) and/or *In re Dailey*, 357 F.d 669, 149 USPQ 47 (CCPA 1966)).

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Double Patenting

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4. Claims 36 and 37 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 2 of prior U.S. Patent No. 6,303,143. This is a double patenting rejection. The claims of the instant claimed invention appear to be the same as those in the patent. To overcome this rejection, Applicant is requested to amend or cancel the claims.

5.

Crystal Mall 1 Facsimile Center

A facsimile center has been established in Crystal Mall 1, room 7C10. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is (703) 308-4556. The new location should be used in all instances when faxing any correspondence to Group 1600. Use of the new Crystal Mall 1 center will facilitate rapid delivery of materials to the Group. The faxing of all papers must conform with the notice published in the Official Gazette, 1096 O.G. 30 (November 15, 1989).

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6. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Michael A. Williamson whose telephone number is (703) 308-1235.

Michael A. Williamson
Patent Examiner
Group 1610

Williamson020225
February 24, 2002